No. 82-1127

In the Supreme Court of the United States

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,
PETITIONER

v.

ELIZABETH HALL, ET AL.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The United States will address the following question:

Whether a non-resident corporation's purchases of goods in the forum state, even if coupled with the presence in the forum state of the corporation's employees for the purpose of receiving training related to the operation and maintenance of the goods purchased, constitutes sufficient contacts under the Due Process Clause for the exercise of *in personam* jurisdiction over the non-resident corporation on a cause of action unrelated to the purchases.

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INTEREST OF THE UNITED STATES

This case presents a substantial question concerning the level and type of contacts sufficient under the Due Process Clause to permit a state to exercise *in personam* jurisdiction over a non-resident defendant on a cause of action unrelated to the defendant's contacts with the forum state. The Court's resolution of this question could have a significant impact on the foreign trade relations of the United States. In particular, the United States is concerned that the ability of American firms to compete in world trade markets could be adversely affected because foreign corporations might be dissuaded from purchasing American products if the mere purchases of products in the United States — together with training in the United States as part of the purchase agreement — is sufficient to subject foreign businesses to the jurisdiction of American courts for causes of action totally

unrelated to their purchases. Such a result would be detrimental to the government's efforts to promote the export of American products.

STATEMENT

Petitioner is a Colombian corporation that has, under the ruling below, been subjected to wrongful death actions in the courts of the State of Texas. The background of the litigation is as follows:

1. Petitioner ("Helicol") is in the business of providing helicopter transportation in South America to oil and construction companies. An American joint venture, known as Williams-Sedco-Horn and based in Texas, formed a consortium ("Consorcio") under Peruvian law to construct a pipeline from the interior of Peru to the Pacific Ocean (Pet. App. 2a, 46a).[1] Helicol was contacted by Williams, an Oklahoma construction company and a member of Consorcio, about providing helicopter services in Peru for the consortium (*id.* at 2a, 47a). Helicol sent a representative to Tulsa, Oklahoma, to discuss a contract for such services; thereafter, the Helicol representative travelled to Houston, Texas, to continue the contract discussions (*ibid.*). At the meeting in Houston, the parties apparently reached final agreement on the terms of a contract between Helicol and Consorcio (*ibid.*). The contract was not finalized in Houston, however, because Peruvian law required that it be approved by the Peruvian Air Force (*ibid.*). Accordingly, the contract was finalized in Lima, Peru, where it was typed in Spanish on official Peruvian government stationery (*ibid.*). The contract provided that the residence of all

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[1] Williams-Sedco-Horn is composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Oklahoma; Sedco Construction Corporation, a Texas corporation; and Horn International, Inc., a Texas corporation (Pet. App. 2a n.1).

parties to the contract would be Lima and that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts (*id.* at 47a).

In addition to the one meeting in Houston, Helicol's other contacts with Texas were that it purchased substantially all of its helicopter fleet from Bell Helicopter Company in Fort Worth (Pet. App. 3a, 48a-49a). As part of the purchase price for the helicopters, Bell provided operational and maintenance training to Helicol's employees, so that Helicol had employees in Texas on a regular basis for training purposes (*ibid.*). Helicol also sent employees to Texas from time to time to negotiate helicopter purchases with Bell (*id.* at 3a, 9a). Helicol, however, does not perform any of its business operations in Texas, has never solicited business in Texas, has never sold any products that reached Texas, is not authorized to do business in Texas, has never had an agent for the service of process in Texas, and has never recruited employees in Texas (*id.* at 2a).[2]

In January 1976, a helicopter owned by Helicol crashed in Peru, killing respondents' decedents, all of whom were employees of Williams-Sedco-Horn, the American parent of Consorcio (Pet. App. 2a). Respondents' decedents were American citizens domiciled in states other than Texas who had been hired by Williams-Sedco-Horn in Houston and sent to Peru to work on construction of the pipeline (*ibid.*). Respondents, who also are not Texas residents, filed wrongful death actions against Helicol in the District Court of Harris County, Texas, alleging pilot negligence as the cause of the helicopter accident (*id.* at 1a, 6a).

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[2]Although Helicol and respondents appear to disagree on the extent of Helicol's contacts with Texas, the above-noted facts, having been accepted by *both* the majority and dissenting opinions in the Supreme Court of Texas, do not appear to be debatable.

2. Helicol filed a special appearance to contest the state court's *in personam* jurisdiction (Pet. App. 1a). The trial court denied Helicol's motion to dismiss and held that it had jurisdiction (*ibid.*). The cases went to trial, resulting in a jury verdict against Helicol in the amount of $1,141,200 (*id.* at 64a). Helicol appealed to the Texas Court of Civil Appeals, which held that the trial court lacked *in personam* jurisdiction (*id.* at 63a-71a). By a divided vote, the Supreme Court of Texas initially affirmed the court of appeals (*id.* at 46a-62a). The majority noted that "[n]one of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America" (*id.* at 55a). The court further noted that the complaints alleged negligent "pilot error" in Peru, not defective manufacture of any product in Texas (*id.* at 53a; emphasis omitted). In this situation, the majority concluded, jurisdiction could be asserted over the defendant foreign corporation only if it had a "general presence" in the forum comparable to that considered in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 445-448 (1952) (Pet. App. 54a):

> *Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors' meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum.

The majority pointed out that, in the present case, Helicol did not engage in "pervasive" corporate activities in the

forum state comparable to those in *Perkins*, and Texas could not be characterized as the corporation's " 'own backyard' " (Pet. App. 52a, 54a; citation omitted). Thus, because Texas was an inconvenient forum for Helicol, and because Texas could not assert that this litigation served to "protect[] its citizens" or to "provid[e] a procedure for peaceful resolution of [a] dispute[] that [arose] in whole or in part within * * * [its] territory," the majority ruled that the exercise of *in personam* jurisdiction would offend the Due Process Clause (*id.* at 55a).

3. On rehearing, the Supreme Court of Texas reversed its initial decision, again by a divided vote (Pet. App. 1a-45a). The new majority concluded that Helicol had sufficient contacts with Texas to support *in personam* jurisdiction (*id.* at 5a-7a). The majority also relied on the interest of the State of Texas in adjudicating the dispute. Though noting that respondents are not residents of Texas, the court observed that they are "citizen[s] of this country" (*id.* at 6a). The court also observed that the victims of the helicopter crash in Peru originally had been "hired in Houston, Texas by a Texas resident" (*ibid.*).[3] Accordingly, the court concluded that Texas had an interest in "protecting the employees" of its local companies (*ibid.*). Finally, the court noted respondents' "interest and desire in obtaining convenient and effective relief" (*id.* at 6a-7a) and concluded that that interest would best be served by upholding *in personam* jurisdiction over Helicol. The dissenting justices would have adhered to the court's original ruling (*id.* at 32a-45a).

SUMMARY OF ARGUMENT

In *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923), the Court held that mere purchases of goods in

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[3]The Texas "resident" that hired respondents' decedents was Williams-Sedco-Horn (Pet. App. 2a).

the forum state by a non-resident corporation were insufficient to support *in personam* jurisdiction for a cause of action not related to the purchases. Although the Court has subsequently considered the requirements of the Due Process Clause in this area in a variety of differing factual contexts, nothing in its subsequent cases has cast doubt on the validity of *Rosenberg*.

In this case, we ask the Court to recognize that the realities of today's sophisticated marketing practices, particularly for "high technology" products, frequently make employee training and related services an essential part of a purchase agreement. Thus, it is not uncommon for foreign firms desiring to buy high technology products to send their operational and maintenance employees to the United States to receive such training. In our view, the presence of a foreign firm's employees in the forum state for such purposes should not alter the result reached in *Rosenberg*; rather, purchases plus training or services related to the purchases should not be treated any differently than purchases alone. Such a result reflects a sensible, modern-day application of *Rosenberg*.

The issue is substantial because of the critical importance of foreign trade to our national economy. A foreign firm that finds itself subject to suit in a state court on an unrelated cause of action merely because it has sent employees to that state to learn how to operate and maintain equipment purchases may well find it more expedient to do its foreign trading with firms in other countries. The Executive Branch and Congress have, in recent years, taken important steps to remove obstacles and potential obstacles to the competitive standing of American firms in world markets. Those efforts would be severely undercut if they were met with the imposition of new barriers such as that imposed by the decision below.

ARGUMENT

A FOREIGN CORPORATION'S PURCHASES OF EQUIPMENT IN THE FORUM STATE, EVEN WHEN COUPLED WITH THE PRESENCE IN THE FORUM STATE OF THE CORPORATION'S EMPLOYEES FOR THE PURPOSE OF RECEIVING TRAINING AND OTHER SERVICES RELATED TO THE USE OF THE EQUIPMENT PURCHASES, IS INSUFFICIENT UNDER THE DUE PROCESS CLAUSE TO VEST THE FORUM STATE WITH *IN PERSONAM* JURISDICTION OVER THE FOREIGN CORPORATION ON AN UNRELATED CAUSE OF ACTION

As earlier noted (see page 3 note 2, *supra*), the parties appear to dispute the extent of Helicol's contacts with Texas. The interest of the United States in this case does not require us to take sides in that factual dispute. We note, however, that the Supreme Court of Texas considered Helicol's most substantial contact with Texas to be its purchase of some $4 million worth of helicopters and associated parts and services from Bell Helicopter (Pet. App. 3a). Should this Court's decision turn on that fact, the ramifications for the ability of American businesses to compete effectively in world markets could be substantial. Accordingly, we confine our submission to that issue.

1. In our view, the question whether mere purchases by a non-resident defendant[4] in the forum state are sufficient to support the exercise of *in personam* jurisdiction by the forum state on a cause of action *not* related to the purchases

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[4]Although the federal government's interest in this case stems from its implications for foreign trade, the principles that we discuss necessarily apply to all non-resident defendants, not just "alien" defendants. Thus, we do not separately address the second question presented by the petition.

is controlled by *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923). In *Rosenberg*, this Court held that mere purchases of goods in the forum state by a non-resident corporation were insufficient to support *in personam* jurisdiction. This was so even if the non-resident corporation undertook purchasing trips into the forum state "at regular intervals" (*id.* at 518). Thus, the Court held that *in personam* jurisdiction was lacking even though the cause of action actually arose in the forum state. Nothing in this Court's subsequent cases casts doubt on *Rosenberg*'s rationale.

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945), is, of course, the Court's landmark decision with respect to *in personam* jurisdiction over non-resident defendants. In that case, the Court established a flexible standard that significantly expanded the ability of state courts to assert *in personam* jurisdiction over such defendants. Although *Rosenberg* antedated *International Shoe*, the latter recognized (326 U.S. at 318) that *Rosenberg* was consistent with the principles announced therein.

Subsequently, in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the Court addressed the issue of *in personam* jurisdiction over a non-resident defendant for a cause of action arising out of activities entirely distinct from the defendant's activities in the forum state. There, the Court ruled that a non-resident corporation's contacts with the State of Ohio were sufficiently "substantial," "continuous and systematic" to confer Ohio with *in personam* jurisdiction if the State chose to exercise it (*id.* at 445, 447). But it is clear from the Court's description of the facts in *Perkins* that the case involved substantially more than mere purchases. Indeed, the Court's summary of the corporation's contacts (*id.* at 447-448) indicates that the corporation carried on nearly all of its corporate activities in Ohio.

Then, in *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958), the Court warned that "the flexible standard of *International Shoe*" does not "herald[] the eventual demise of all restrictions on the personal jurisdiction of state courts." This warning was given vitality in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), in which the Court overturned a decision holding that, in a products-liability action, Oklahoma courts could exercise *in personam* jurisdiction over a New York automobile retailer because of the retailer's sale of an automobile in New York that became involved in an accident in Oklahoma. See also *Kulko* v. *California Superior Court*, 436 U.S. 84 (1978) (rejecting *in personam* jurisdiction over non-resident parent in domestic relations case).

Thus, *Rosenberg* has not been limited in any way by the Court's more recent decisions, and it is therefore controlling when mere purchases are involved. Moreover, to take account of the realities of today's sophisticated products and marketing practices, the purchases approved in *Rosenberg* necessarily must include the training and services that go hand-in-hand with those purchases. As we discuss in the next section, if operational and maintenance training is not deemed to be an integral part of the purchase transaction, purchase agreements in certain key sectors of our economy might not be consummated in the first place. Given the nature of the equipment here (*i.e.*, helicopters) and other "high technology" equipment discussed below, treating purchases and training in the same fashion as purchases alone is a sensible, modern-day reading of *Rosenberg* that is entirely consistent with the rationale of that case.

2. The United States Trade Representative has informed us that while many American export transactions do not require the seller to provide training to the personnel of the buyer, the purchase-training agreement between Helicol and Bell Helicopter in the instant case is typical in certain

sectors of the economy.[5] The Trade Representative has advised us that the provision of training by the seller is especially important in the export of high technology, turnkey projects such as nuclear power plants; in such transactions, the seller, as part of the sale transaction, customarily provides training for local personnel involved in the maintenance, overhaul and operation of the plant. The training often takes place at the manufacturer's facilities (*i.e.*, in the United States) because of the specialized and complex nature of the training equipment and procedures. The Trade Representative has advised Congress that services of this nature "are critical to exports of high technology and capital goods." Opening Statement of Ambassador William E. Brock, United States Trade Representative, Before a Jt. Oversight Hearing of the Senate Comm. on Finance and the Senate Comm. on Banking and Housing, and Urban Affairs on U.S. Trade Policy 6 (July 8, 1981) (hereinafter "Statement on U.S. Trade Policy").[6]

The aircraft industry is another sector of the economy in which the provision of training for operators and maintenance personnel is a frequent practice. This industry includes the manufacture and sale of helicopters as well as fixed-wing aircraft. In this area, a purchaser's operators are frequently trained at the manufacturer's facilities prior to the delivery of the aircraft; and in some cases, when

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[5]The Trade Act of 1974, 19 U.S.C. (& Supp. V) 2101 *et seq.*, "established within the Executive Office of the President the Office of the United States Trade Representative" (19 U.S.C. (Supp. V) 2171(a)). The duties of the Trade Representative are set forth at 19 U.S.C. (& Supp. V) 2171(c)(1). In Section 1(b)(1) of Reorg. Plan No. 3 of 1979, 44 Fed. Reg. 69273, the President established the Trade Representative "as the principal advisor to the President on international trade policy," and delegated to the Trade Representative the "primary responsibility • • • for developing, and for coordinating the implementation of, United States international trade policy • • •."

[6]A copy of this document is being lodged with the Clerk of this Court and served on the parties.

replacement operators are added to the staff of the purchaser, training continues for new operators at the manufacturer's facilities. When aircraft are modified for specific operating conditions, maintenance personnel are also trained by the manufacturer to work with and maintain the equipment as modified. Such training normally continues beyond purchase.

Foreign purchasers often seek such training at the facilities of manufacturers in the United States because the training equipment and the type of training they desire are only available here. For example, the simulators on which operational and maintenance training takes place are themselves expensive and technologically advanced pieces of equipment, and they may not be available overseas. Moreover, foreign purchasers sometimes want their operating and maintenance personnel trained in this country so that they will be trained in accordance with the high standards set by our government. Purchase agreements also are sometimes preceded by the extended presence of the purchaser's representatives at the manufacturer's facilities as the specifications of the product and the terms of the purchase agreement are developed, and as the engineers of the purchaser work with the manufacturer's engineers to develop specific modifications (*e.g.*, to accommodate high altitude or extreme temperature operating conditions). Finally, "acceptance crews" consisting of pilots and mechanics employed by the purchaser may spend two to three months in this country prior to accepting delivery of the equipment; their function is to ensure that the equipment meets all contract specifications and that operations are fully satisfactory, and their favorable report is a prerequisite to the purchaser's acceptance of delivery.

Thus, to the extent that the decision below relies on Helicol's purchase of its helicopter fleet in Texas, coupled with the presence of Helicol employees in Texas to receive training on the operation and maintenance of the helicopters, it has a significant potential for discouraging foreign

firms from purchasing American products. This would thwart positive efforts of Congress and the Executive Branch to make American firms and products more competitive internationally. As part of these efforts, the government has developed a comprehensive plan to remove impediments in our laws that were perceived as obstacles (or potential obstacles) to this competitiveness. See, *e.g.*, Export Trading Company Act of 1982, Pub. L. No. 97-290, 96 Stat. 1233 *et seq.*; S. 414, 98th Cong., 1st Sess. (1983) (a bill to amend and clarify the Foreign Corrupt Practices Act of 1977); Statement of Ambassador William E. Brock, United States Trade Representative, *U.S. Trade Policy, Phase I: Administration and Other Public Agencies: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 97th Cong., 1st Sess. 5-43 (1981) (hereinafter cited as "*Hearings*");[7] Statement of Lionel H. Olmer, Under Secretary for International Trade, Dep't of Commerce in *Hearings, supra*, at 335-348, 411-417; Statement of W. Stephen Piper, Office of the United States Trade Representative in *Hearings, supra*, at 402-407, 408-411.

Maintaining and improving our competitive posture in high technology industries, including the aircraft industry, is particularly vital. As Mr. Piper noted in his testimony before Congress (*Hearings, supra*, at 402):

> [T]he aerospace industry is of major importance to the U.S. balance of trade * * * [and] export sales are critical to its viability. Over the past 5 years, 67 percent of civil transport aircraft sales in the United States have been for export; 46 percent of civil helicopter sales and 28 percent of general aviation aircraft sales have been for export.

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[7]Ambassador Brock told the Subcommittee that "the restoration of U.S. competitiveness" was one of the "three * * * most critical issues presently affecting the position of the United States in the international trade arena." *Hearings, supra*, at 5.

Equally important, however, Mr. Piper stressed various forces at work that threaten to erode the preeminence of America's aircraft industry. For example, he testified that (*id.* at 403):

> The first force is the foreign government focus on and targeting of this high technology industry for development assistance as a major element of their economic industrial policies. Foreign governments are willing to provide the capital and to bear the risk for launching new civil aircraft models.

Because the American aerospace industry cannot count on the same government subsidies that foreign governments are providing for our competitors, other measures are required. See, *e.g.* Statement on U.S. Trade Policy, *supra*, at 2-3. The United States accordingly has an interest in assuring that its efforts to remove barriers to foreign trade are not undermined by the establishment of different obstacles.

3. The inconvenience to a foreign company of defending an unrelated lawsuit brought in a forum in which the company has done no more than purchase equipment and related services necessary for the conduct of its business elsewhere needs little elaboration. In a case such as the present one, the witnesses required for the trial of the case, the documentary proof, and the physical evidence will almost always be located in the jurisdiction in which the accident took place, and not in the state in which, by happenstance, the foreign defendant purchased some of its equipment. See, *e.g.*, *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, 511 (1947) ("Lynchburg, some 400 miles from New York, is the source of all proofs for either side, with possible exception of experts. Certainly to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants."). See also *Piper Aircraft Co.* v. *Reyno*, 454 U.S.

235, 258 (1981) ("A large proportion of the relevant evidence is located in Great Britain.").[8]

Thus, both fairness and judicial economy, as well as the interest of the United States in promoting its competitiveness in world markets, dictate the conclusion that the Court should adhere to its ruling in *Rosenberg* with respect to purchases, even when those purchases may, as here, be coupled with the presence in the forum state of the foreign corporation's employees for purposes of training and services necessarily related to the purchase transaction.

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[8] *Gilbert* and *Reyno* applied the requirements of the doctrine of *forum non conveniens*. Those cases are instructive here because, like the doctrine of *forum non conveniens*, the Due Process Clause requires "[a]n 'estimate of the inconvenience' which would result to the corporation from a trial away from its 'home' or principal place of business . . . ." *International Shoe Co.* v. *Washington, supra*, 326 U.S. at 317.

CONCLUSION

Helicol's purchases of helicopter equipment in Texas and the presence of Helicol's employees in Texas for related operational and maintenance training do not, without more, vest the Texas courts with *in personam* jurisdiction over Helicol for a cause of action not related to the purchases and training.

Respectfully submitted.

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